IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.362 of 1996

Reserved on: September 18, 2007

Decided on*: *September 19, 2007.

State of H.P. ***.....Appellant.***

VERSUS

Sangram Singh & Ors. ***.....Respondents.***

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant: **Mr.M.L.Chauhan, Additional A. G.**

For the Respondents: **Mr.G.D.Verma, Sr.Advocate with Mr.Romesh Verma, Advocate.**

Kuldip Singh, Judge

The appellant / defendant is in appeal against the judgment, decree dated 5.8.1996 passed by learned District Judge, Hamirpur in Civil Appeal No.124 of 1990 confirming the judgment, decree dated 21.9.1990 passed by learned Senior Sub Judge, Hamirpur in Civil Suit no.239-1/87.

2. The facts, in brief, are that respondents / plaintiffs filed a suit for permanent prohibitory injunction against the appellant on the allegations that they were previously tenants on land comprised in Khata No.621 min, Khatauni No.707, Khasra No.1854, measuring 25 kanals 17 marlas to the extent of ½ share i.e. 12 kanals 19 marlas as

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

per Jamabandi for the year 1983-84 of Tika Bijhar, Tappa Dhatwal, Tehsil Barsar, District Hamirpur, H.P. The appellant has no right to interfere in the possession of the respondents and appellant be restrained from interfering in possession of the respondents on the suit land. The land was granted as *Nautor* according to *Kangra Nautor Rules* on permanent basis by Deputy Commissioner, Kangra in favour of Dev Raj and his brother Durga Dass. The tenancy was created by Deputy Commissioner, Kangra as well as Gram Panchayat Bijhar on rent 8 Annas per kanal which the father of the respondents used to pay to the Panchayat. The possession of the suit land remained with the respondents. The respondents have become owners of the suit land after coming into force H.P. Tenancy and Land Reforms Act. The appellant was requested to acknowledge the ownership and possession of the respondents on the suit land and not to interfere in their possession on the suit land but the appellant was not ready and willing to accept the request of the respondents. They served notice under Section 80 CPC to the appellant and then filed the suit.

3. The suit was contested by appellant by filing written statement, several preliminary objections such as lack of enforceable cause of action, jurisdiction of the Court to try the suit, validity of notice, limitation, valuation and mis-joinder of necessary parties were taken. On merits, the appellant admitted that at one point of time suit land was given to respondents' father and his brother Durga Dass for five years on lease but after the lapse of lease land

reverted back to its original position vide mutation No.553. No rent was fixed by the Deputy Commissioner nor any tenancy was created. It has been submitted that suit land is owned and possessed by the appellant. The respondents filed replication and contested the claim of the appellant and re-asserted their case which was set up in the plaint.

4. The learned trial Court decreed the suit on 21.9.1990 and granted a declaration that the respondents are in possession of the suit land and the appellant was restrained from interfering in possession of the respondents on the suit land. The appellant filed appeal against the judgment, decree dated 21.9.1990 which was dismissed by learned District Judge, Hamirpur on 5.8.1996. The appellant has filed the present appeal against the judgment, decree dated 21.9.1990. The appeal has been admitted on the following substantial questions of law:-

(i) Whether the civil Court has no jurisdiction to entertain and try the suit in view of the bar created by Section 10 of the H.P. Village Common Lands (Vesting & Utilization) Act, 1974 and under Section 13 of the Punjab Common Lands (Regulation) Act, 1961?

(ii) Whether the land in dispute being shamlat tika has rightly been vested firstly in Panchayat and then in the State of H.P. free from all encumbrances and all rights title or interest existing on the suit land stood extinguished by operation of law?

(iii) Whether suit land being shamlat tika has neither been assessed to land revenue nor it has been legally partitioned?

(iv) Whether mere mis-reading of documentary and oral evidence on record itself amounts to substantial question of law?

5. I have heard the learned counsel for the parties and gone through the record.

6. The learned Additional Advocate General has submitted that two Courts below have not properly appreciated the material on record. The State is owner in possession of the suit land. The respondents are not entitled to decree of permanent prohibitory injunction against the real owner of the suit land i.e. State. The learned counsel for the respondents has submitted that two Courts have recorded concurrent finding of fact that respondents are in possession of the suit land. No substantial question of law is involved in the case.

7. All the substantial questions of law are basically interconnected and, therefore, all are being taken up together for decision collectively.

8. The basic question in the present appeal is whether respondents are in possession of the suit land or not. The respondents filed the suit for permanent prohibitory injunction by pleading that they were earlier tenants on the suit land and after

coming into force the H.P. Tenancy & Land Reforms Act, 1972 have become owners thereof. The learned Sr. Sub Judge decreed the suit of the respondents by declaring that respondents are in possession of the suit land and appellant was restrained from interfering in possession of the respondents on the suit land. This finding was recorded by the trial Court after appreciation of evidence. The respondents accepted the ultimate relief which was granted to them by the trial Court and they did not file any appeal against judgment, decree dated 21.9.1990. The State filed the appeal against judgment, decree dated 21.9.1990 which was dismissed by learned District Judge on 5.8.1996 by way of impugned judgment, decree. In Para-14 of the impugned judgment, learned District Judge has recorded a specific finding that the respondents have merely been held to be in possession of the suit land and the State of Himachal Pradesh has been restrained by a decree of permanent injunction from interfering on the suit land. In other words, except for declaring that respondents are in possession of the suit land no other declaration was given in favour of the respondents.

9. The respondents are in settled possession of the suit land and they have every right to protect their possession and State cannot interfere in possession of the respondents on the suit land except by following due process of law. The Civil Court has jurisdiction to try suit of the nature filed by respondents. In ***Dalip Singh & Others*** versus ***State of H.P. & Others [1992 (1) Sim.L.C.320],*** this Court has held

that it is settled law that where a person is in settled possession of the property even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law. In view of the law laid down by this Court in ***Dalip Singh's case (supra),*** there is no manner of doubt that respondents are entitled to protect their possession by a decree of prohibitory injunction restraining the appellant from interfering in possession of respondents otherwise then in accordance with law. No case has been made out that the findings recorded by the two Courts below are based upon misreading of oral and documentary evidence on record. The question whether *Shamlat* land is not assessed to land revenue or it has not been partitioned has no bearing on the possession of the respondents on the suit land. The two Courts below have rightly appreciated the material on record. The substantial questions of law are decided accordingly.

10. The result of the above discussion is that the appeal is dismissed with no order as to costs.

September 19, 2007. **(*Kuldip Singh*)**
(soni) ***Judge***